

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,                   :  
  :  
                  v.                            : File No. 2:06 CR 131  
  :  
SPENCER DURHAM                               :

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed April 21, 2010. Defendant's objections were filed June 9, 2010.

After careful review of the file and the Magistrate Judge's Report and Recommendation, this Court ADOPTS the Magistrate Judge's recommendations in full for the reasons stated in the Report.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

The motion to vacate , set aside, or correct a sentence (Doc. 72) and Amended Petition (Doc. 75) both filed pursuant to 28 U.S.C. § 2255 are **DENIED**.

Pursuant to Fed. R. App. P. 22(b), a certificate of

appealability is **DENIED** because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal taken *in forma pauperis* would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this 17th day of June, 2010.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge  
U.S. District Court